

REMARKS

The Examiner has maintained the latest rejections. Applicant still purports that such rejections are deficient. However, in the spirit of expediting the prosecution of the present application, applicant has substantially incorporated the subject matter of multiple dependent claims (i.e. Claims 7, 9, 11, 12, 13 et al.) into each of the independent claims. It is noted that the previously submitted arguments regarding such subject matter has still not been addressed by the Examiner.

Further, since the subject matter of such dependent claims has already been considered by the Examiner, it is asserted that such claim amendments (and the previously submitted arguments, etc.) would not require a new search and/or consideration.

The Examiner has rejected Claims 1-2, 5-23, 26-44, and 47-63 under 35 U.S.C. 103(a) as being unpatentable over Gampper et al. (hereinafter, "Gampper," 6,003,082) in view of Birdwell et al. (hereinafter, "Birdwell", 6,002,852). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove.

Specifically, applicant has amended each of the independent claims to substantially include the former subject matter of 7, 9, 11, 12, 13 et al. In particular, now claimed is:

"wherein said download controlling message includes a broadcast message, said method comprising the steps of:

issuing said broadcast message from said source computer to said plurality of target computers indicating availability of said computer file for download from said source computer, said broadcast message including the at least one download qualifying parameter;

receiving said broadcast message at said plurality of target computer;

determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer already has said computer file;

determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said computer file in response to said broadcast message;

downloading said computer file from said source computer to those target computers that do not already have said computer file and that qualify to download said computer file;

monitoring how many target computers download said computer file in response to said broadcast message; and

adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in response to said broadcast message;

wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target computer to control whether or not said particular target computer qualifies to download said computer file;

wherein said broadcast message includes time range data specifying a range of times within which target computers qualifying to download said computer file in response to said broadcast message should download said computer file;

wherein each target computer that qualifies to download said target file in response to said broadcast message initiates downloading at a time quasi-randomly selected within said range of time;

wherein a target computer that has downloaded said computer file subsequently acts as a source computer;

wherein upon receipt of said computer file said target computer issues prompts seeking user input specifying how said computer file should be used;

wherein said computer file is a virus definition data file for use by an anti-virus computer program” (see this or similar, but not identical subject matter in all independent claims).

With respect to former Claim 7 et al. (now substantially incorporated into each of the independent claims), the Examiner relies on col. 2, lines 39-45; col. 8, lines 27-47; and col. 10, lines 59-63 from Gampper to make a prior art showing of applicant’s claimed “wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target computer to control whether or not said particular target computer qualifies to download said computer file.”

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of target computer-generated quasi-random parameter that is used in combination with a qualifying parameter in the manner claimed.

Even still, with respect to former Claim 9 et al. (now substantially incorporated into each of the independent claims), the Examiner relies on col. 10, lines 18-19, 37-40, 50-52; and col. 13, lines 14-20 from Gampper to make a prior art showing of applicant’s claimed “wherein each target computer that qualifies to download said target file in response to said broadcast message initiates downloading at a time quasi-randomly selected within said range of time.”

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of quasi-randomly selected time for downloading the target file within the range of time, as claimed.

With respect to former Claim 11 et al. (now substantially incorporated into each of the independent claims), the Examiner relies on col. 2, lines 25-27, 37-40; col. 3, lines 57-59; col. 4, lines 2-11; col. 7, lines 14-16; and col. 8, lines 40-65 from Gampper

to make a prior art showing of applicant's claimed "wherein a target computer that has downloaded said computer file subsequently acts as a source computer."

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of a target computer (which has downloaded the computer file) subsequently acting as the source computer in the manner claimed.

Moving to former Claim 12 et al. (now substantially incorporated into each of the independent claims), the Examiner relies on col. 6, lines 26-40; and col. 7, lines 42-50 from Gampper to make a prior art showing of applicant's claimed "wherein upon receipt of said computer file said target computer issues prompts seeking user input specifying how said computer file should be used."

After careful review of these excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, it is clear that there is absolutely no suggestion of any sort of prompting of the user for input regarding use of the computer file upon the receipt thereof, as claimed.

Regarding former Claim 13 et al. (now substantially incorporated into each of the independent claims), the Examiner also relies on col. 6, lines 26-40; and col. 7, lines 42-50 from Gampper to make a prior art showing of applicant's claimed "wherein said computer file is a virus definition data file for use by an anti-virus computer program."

The Gampper reference does not even mention viruses, let alone a virus definition data file for use by an anti-virus computer program, as claimed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable

expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness have not been met, since the prior art references, when combined, fail to teach or suggest all the claim limitations. A notice of allowance or a specific prior art showing of such claimed features, in combination with the remaining claim limitations, is respectfully requested.

Reconsideration is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P160/00.110.01).

Respectfully submitted,

By: \_\_\_\_\_

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Date: 3/30/05

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